

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 95-34
Table of Allotments)	RM-8600
FM Broadcast Stations)	
(Rapid City, South Dakota))	
)	DOCKET FILE COPY ORIGINAL
TO: Chief, Allocations Branch)	

COMMENTS AND COUNTERPROPOSAL

Associated Investors, Inc., ("AII"), by its attorneys and pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby submits its comments and counterproposal in the above-captioned rulemaking proceeding. AII requests that the Commission deny the petition of Conway Broadcasting ("Conway") to amend the FM Table of Allotments to add Channel 222C at Rapid City, South Dakota, and instead amend the FM Table of Allotments to add Channel 222C at Lead, South Dakota as the community's first local aural service. In support of this request, AII states the following:

1. Allotment of Channel 222C to Rapid City would provide Rapid City with its thirteenth local aural service (its ninth local

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FM service).¹ By contrast, currently there are no local aural services at Lead, and allotment of Channel 222C there would provide the community with its first local aural service. Channel 222C can be allotted to Lead consistent with the Commission's distance separation requirements. (See Engineering Exhibit attached hereto). Allotment of Channel 222C at Lead and at Rapid City are mutually exclusive; only one or the other allotment may be made consistent with the Commission's Rules. (Id.)

2. Given the choice between provision of a first local service at Lead and a thirteenth local service at Rapid City, the Lead allotment must be preferred. Allotment of Channel 222C at Lead better meets the Commission's FM allotment priorities than allotment of Channel 222C at Rapid City. The Commission's FM allotment priorities are as follows:

- (1) first aural service;
- (2) second aural service;
- (3) first local service;
- (4) other public interest matters.

¹ The following commercial FM channels are currently allotted to Rapid City: 230C1, 250C1, 254C1, 262C1, 281C1, 292C. The following AM frequencies are currently allotted to Rapid City: 920 khz, 1150 khz, 1340 khz, 1380 khz, for a total of ten commercial aural transmission services. In addition, there are two noncommercial educational FM stations in Rapid City (licensed on Channels 207 and 217), which according to the Commission are to be considered in a Section 307(b) transmission service analysis. See Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990). Thus, the total number of aural transmission services allotted to Rapid City is 12.

Co-equal weight is given to priorities (2) and (3). Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 90-93 (1982). Because both Lead and Rapid City have more than two aural reception services (See Engineering Exhibit), provision of a first local transmission service (priority 3) is the most significant factor to be considered in this instance.

3. The Commission has long recognized the importance of providing a community such as Lead with its first local transmission service. See Atchison, Horton and Wathena, Kansas, 7 FCC Rcd 4645 (Mass Med. Bur. 1992) (provision of first local transmission service preferred over provision of second such service); Alegria I, Inc., 61 RR 2d 136 (Rev. Bd. 1986), recon. denied, 2 FCC Rcd 1762 (Rev. Bd. 1987) (to same effect); Caldwell Broadcasting Corp., 100 FCC 2d 115 (Rev. Bd. 1985), rev. denied, FCC 86-245 (rel. 5-15-86) (to same effect); Alessandro Broadcasting Corp., 99 FCC 2d 1 (Rev. Bd. 1984), rev. denied, FCC 84-334 (rel. 6-28-86) (to same effect). In the above cases the Commission's Allocations Branch and Review Board consistently favored the provision of a first local service over a second local service. Clearly in this case providing a **first** local transmission service at Lead must be preferred over providing a **thirteenth** such service at Rapid City.

4. Because the instant counterproposal to allot Channel 222C to Lead clearly prevails over the proposal to allot Channel 222C to

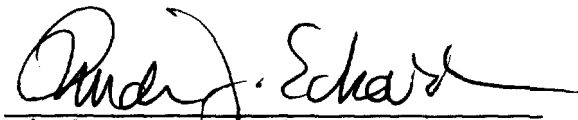
Rapid City with regard to the third allotment priority, further analysis is not required. However, there are public interest benefits to the allotment of Channel 222C to Lead that are not associated with the allotment of yet another FM channel to Rapid City. Lead is an incorporated community of 3,632 persons² with an elected government consisting of a mayor and four commissioners. Lead has the attributes of an independent community including its own City Hall, police department, fire department, library, post office, zip code (57754) and elementary school (the regional high school is located in Lead as well). In addition, Lead is home to numerous clubs and civic organizations, including Kiwanis, American Baptist Women, the Lead Civic Club, Daughters of the American Revolution, Citizens' Club of Lead, YMCA, and Lions' Club. Lead attracts many tourists each year, as it is home to the Homestake Goldmine (and a mining museum), is located in the scenic Black Hills (not far from Mt. Rushmore), and offers skiing and other winter sports activities. There are two hotels and number of smaller bed & breakfast inns in Lead. Accordingly, the public interest weighs in favor of providing a first local radio service to a community of such significance as Lead, as compared to a thirteenth such service to Rapid City.

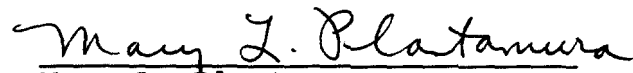
² Source: 1990 Census of Population and Housing, Summary, Population and Housing Characteristics for South Dakota, Table 2 (U.S. Census Bureau).

5. In sum, Associated Investors, Inc., hereby requests that the Commission deny the petition of Conway Broadcasting to amend the FM Table of Allotments to add Channel 222C to Rapid City, South Dakota, and instead amend the Table of Allotments to add Channel 222C to Lead, South Dakota. If Channel 222C is allotted to Lead, Associated Investors, Inc., intends to file with the Commission an application for a construction permit for the station, and if awarded the permit intends to construct and operate Channel 222C at Lead.

Respectfully submitted,

ASSOCIATED INVESTORS, INC.

By: 
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Its Attorneys

May 22, 1995

PATTS

PROFESSIONAL ANTENNA, TOWER & TRANSLATOR SERVICE

P.O. BOX 1738 • MONTROSE, COLORADO 81402 • (970) 249-5926

Engineering Exhibit For
Associated Investors, Inc.

Professional Antenna, Tower and Translator Service (d.b.a. PATTS) has been retained by Associated Investors, Inc. to study the possibility of allocating a Class "C" FM Broadcast Station to serve Lead, SD and surrounding area from the following reference point:

44° 19' 49" North Latitude
103° 50' 10" West Longitude

PATTS performed a Spacing Study which compared the Commercial FM Broadcast Channels (221 through 300) with the Federal Communications Commission (FCC) Spacing Rules. PATTS found one channel which could be proposed in full compliance with the FCC rules. That channel is 222C. The attached tabulations confirm that channel 222C complies with the FCC's Spacing Rules.

Channel 222C is currently involved in an FCC Rule Making for Rapid City, SD. The proposed use of Channel 222C at Lead is mutually exclusive with the proposed use of channel 222C at Rapid City.

Concurrent with the Spacing Study PATTS performed an FM Within Study which revealed that there are at least two FM Radio Reception Services to Lead as well as Rapid City.

This engineering exhibit was prepared by me and is true and correct to the best of my knowledge and belief.

17 May 1995


Alan Greager

PATTS
Montrose, Colorado

May 17, 1995

FM Spacing study

Title: Associated Investors, Inc.
Channel 222C (92.3 MHz)
Database: DW 05/15/95

Latitude: 44-19-49
Longitude: 103-50-10
Safety zone: 5 km

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
KEMC	LIC	MONTANA STATE UNIV. - BI	*219C1	100	45-39-31	293.3	401.5	105
BILLINGS		MT BMLD-940425K	91.7	158	108-34-14	110.0	296.5	CLEAR

KCNE-FM LIC	NEBRASKA	ED TELECOM COMM	*220C2	8.40	42-48-47	158.1	181.4	105
CHADRON		NE BLED-910906KA	91.9	103	103-00-22	338.7	76.42	CLEAR

Call Granted 11/01/90 per FCC release #146 dated 11/02/90; Ant: Shiveley 6813-4D-PS

KRRB	CP	ROUGH RIDER BROADCASTING	221C3	8	46-43-30	14.7	275.7	176
DICKINSON		ND BPH-931012IE	92.1	169	102-54-58	195.4	99.69	CLEAR

DOC-89-138; CP Granted 02/15/94 per FCC release #21830 dated 02/25/94; CP Granted 02/15/94 per FCC release #21830 dated 02/25/94; ORDERED FROM 221A

PRM	PROPOSED RULE MAKING	222C			44-04-50	119.7	55.79	290
RAPID CITY	SD DOC-95-34	92.3			103-13-50	300.1	-234	SHORT

PRM adopted 03/22/95, released 03/29/95; RM-8600

KMCM-FM LIC	GOODLAND	BROADCASTING CO	223C	100	46-24-04	329.0	270.6	241
MILES CITY		MT BLH-841113KT	92.5	300	105-39-06	147.7	29.55	CLEAR

KLGT	LIC	COMMUNICATIONS SYSTEM II	224A	3	44-19-44	271.0	227.8	95
BUFFALO		WY	92.7	8	106-41-33	89.0	132.8	CLEAR

Deletion proposed; ORDERED TO 225C1; BRH-900515YC GRD 5/8/91; Was KLGM 04/01/86

KLGT	APP	COMMUNICATIONS SYSTEM II	225C1	100	44-34-28	277.5	243.0	105
BUFFALO		WY BMPH-950214IB	92.9	26	106-52-14	95.4	138.0	CLEAR

Received per FCC release #16124 dated 03/01/95, accepted per 16133 dated 03/14/95; ORDERED FROM 224A

KRQU	LIC	CRECELIUS/LUNDQUIST COMM	275C	100	41-18-39	202.0	360.6	48
LARAMIE		WY	102.9	372	105-27-12	20.9	312.6	CLEAR

Affiliated with KLD1(AM)

ALLOC			276A		44-24-06	280.6	43.94	29
SUNDANCE		WY	103.1		104-22-42	100.2	14.94	CLOSE

Filing window 06/13-07/12/85 **CLOSED** ; FIRST-COME FIRST-SERVE

>> End of channel 222C study <<

CERTIFICATE OF SERVICE

I, Elizabeth Queen, an employee in the law offices of Roberts & Eckard, P.C., do hereby certify that true copies of the foregoing "Comments and Counterproposal" were sent May 22, 1995, by first-class United States Mail, postage prepaid or, as indicated, by hand, to the following:

* John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Mr. Lars Conway
Conway Broadcasting
4415 Fremont Ave., South
Minneapolis, MN 55409
(Petitioner)


Elizabeth Queen

* BY HAND